

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 313

October 9, 1998, 6:00 p.m.
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BANKRUPTCY REFORM/Conference, Motion to Proceed

SUBJECT: Conference report to accompany the Consumer Bankruptcy Reform Act . . . H.R. 3150. Lott motion to proceed.

ACTION: MOTION TO PROCEED AGREED TO, 94-2

SYNOPSIS: The conference report to accompany H.R. 3150, the Consumer Bankruptcy Reform Act, will enact reforms to prevent creditors who have the means of paying their debts from unjustly filing for bankruptcy, will enact reforms to protect consumers from unfair credit practices, and will enact business bankruptcy reforms. For determining whether Chapter 7 filings should be dismissed or converted to Chapter 13 filings, the conference report will retain the Senate-passed procedural provisions that give a debtor the right to have his or her case on the appropriateness of a Chapter 7 filing heard by a bankruptcy judge, and it will retain the House-passed approach of using an objective rather than a subjective test to determine that appropriateness.

Senator Lott moved to proceed to the conference report. The motion is not debatable. However, the vote on the motion was delayed by unanimous consent, which gave Senators the opportunity to debate the motion.

Those favoring the motion to proceed contended:

The Senate passed its version of this bill nearly unanimously, and 300 House Members, including 75 Democratic Members, voted for the House version. The conferees worked out the areas of disagreement with compromises. The key compromise, which we believe is an improvement, is in the area of conversions of Chapter 7 filings to Chapter 13 filings. Chapter 7 filings have come to be commonly used by many people who have income, including many very wealthy people, to escape paying debts that they are perfectly capable of repaying. Members of both parties in both Houses feel that it is very important to stop those abuses, which are responsible for much of the \$40 billion in consumer bankruptcy debt that is written off each year. Honest, hardworking Americans

(See other side)

YEAS (94)				NAYS (2)		NOT VOTING (4)	
Republican (54 or 100%)		Democrats (40 or 95%)		Republicans (0 or 0%)	Democrats (2 or 5%)	Republicans (1)	Democrats (3)
Abraham	Hutchinson	Akaka	Johnson		Harkin	Bond- ²	Glenn- ²
Allard	Hutchison	Baucus	Kennedy		Kohl		Hollings- ²
Ashcroft	Inhofe	Biden	Kerrey				Wellstone- ^{2AY}
Bennett	Jeffords	Bingaman	Kerry				
Brownback	Kempthorne	Boxer	Landrieu				
Burns	Kyl	Breaux	Lautenberg				
Campbell	Lott	Bryan	Leahy				
Chafee	Lugar	Bumpers	Levin				
Coats	Mack	Byrd	Lieberman				
Cochran	McCain	Cleland	Mikulski				
Collins	McConnell	Conrad	Moseley-Braun				
Coverdell	Murkowski	Daschle	Moynihan				
Craig	Nickles	Dodd	Murray				
D'Amato	Roberts	Dorgan	Reed				
DeWine	Roth	Durbin	Reid				
Domenici	Santorum	Feingold	Robb				
Enzi	Sessions	Feinstein	Rockefeller				
Faircloth	Shelby	Ford	Sarbanes				
Frist	Smith, Bob	Graham	Torricelli				
Gorton	Smith, Gordon	Inouye	Wyden				
Gramm	Snowe						
Grams	Specter						
Grassley	Stevens						
Gregg	Thomas						
Hagel	Thompson						
Hatch	Thurmond						
Helms	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

end up paying those bills when businesses raise their rates to recoup their losses from unfair bankruptcy filings. The solution advocated by the House was an objective test that required people to pay back at least part of their debts if they had enough income to do so. The Senate used the same type of test but made it part of a subjective determination on the part of the judge. This conference report combines the best of both the Senate and House versions--it will use an objective test, but it will give everyone who files for Chapter 7 the procedural protection of being able to appear before a judge to defend the appropriateness of their Chapter 7 filings.

Most of the bankruptcy consumer protections that were in the Senate bill have been retained. One key reform, which many of us are disappointed was dropped, was the cap on the homestead exemption. Senate conferees fought for that provision, but unfortunately some Members were so adamantly opposed to it that the bill would have been killed if we had insisted on its retention.

Those of our colleagues who have complained that the homestead cap was removed are accurate in their complaints. The same cannot be said for other Senators who have registered objections to this bill. For the most part, those objections have been lodged by Democratic Senators who have decided to claim that this conference report is "partisan." They have complained that the conferees dropped a Senate mandate on credit card companies to give their customers a repayment disclosure statement, and they have also been very exercised by the fact that conferees added a limit on the ability of trial lawyers to pursue class action lawsuits in bankruptcy proceedings. These issues are minor parts of the bill, yet our colleagues are indicating that they will not support the conference report in its present form, that they intend to discuss it at length, and that if it passes they will be pleased if President Clinton vetoes it. Of course, many of them will likely vote for the motion to proceed anyway, because doing so will allow them to be able to avoid going on record as being against this popular bill. The trial lawyers will be happy if this bill dies, but businesses, and the American people who have to pay higher interest rates when rich people are able to abuse the bankruptcy system to avoid paying their legitimate debts, will be somewhat less than happy. We know that Democratic conferees took some time before they decided, en bloc, that they would not sign the conference report. Perhaps that is an indication that they may not want to kill this bill, but are instead just making a political maneuver. If they can stop a final vote from occurring (and at this late date in the session there is no doubt that they can) they may be hoping to include the bill in the omnibus appropriations bill with modifications that they demand. We really do not know what their motivations may be. We only understand that except for the argument on the homestead exemption, they have not given any valid reasons for opposing passage and enactment of this bill.

While favoring the motion, some Senators expressed the following reservations:

Development of this bill was bipartisan until the bill reached conference. Then, Democrats were excluded. That exclusion shows in the final product. Numerous procedural protections for consumers have been stripped out. We are especially upset that protections from unfair credit card company practices have been removed. We basically had a deal with the credit card companies--if they accepted the modest reforms we proposed, we would enact measures to stop people who were capable of repaying their debts from escaping from those debts through the bankruptcy system. Half a deal is no deal. Additionally, we are upset that a provision has been put in the bill to stop lawyers from filing class action suits in bankruptcy proceedings. Unscrupulous suits should of course be blocked, but not all class action suits are ill-considered. We know of one case in which a major retail company has apparently been guilty of coercing debtors who file bankruptcy to enter into repayment agreements so that their debts are not erased. In such a case, a class action suit is warranted. We are very disappointed we have reached this impasse. Bankruptcy reform is needed, as are consumer protections. This conference report does not have adequate consumer protections, and should therefore not be enacted into law.

Those opposing the motion contended:

Without a reform of the homestead exemption this conference report is meaningless. As an example, the actor Burt Reynolds recently filed for bankruptcy in Florida (he lost his money in a restaurant chain that failed). In Florida, and in a handful of other States, there is no limit on the value of a house that can be protected from bankruptcy proceedings. Burt Reynolds owns an estate in Florida called "Valhalla" that is valued at \$2.5 million. He will keep that estate even as debts he owes to his creditors are erased. We believe that it is fundamentally unfair that he will be allowed to erase his debts--effectively take money from his creditors--and at the same time remain a millionaire. We are fans of his movies--we enjoyed "Deliverance," "Daisy Miller," and "The Longest Yard"--but we have to say that in this case he is making out much like his title role in "Smokey and the Bandit." We cannot in good conscience support a bankruptcy reform bill that fails to reform the homestead exemption. Therefore, we oppose the motion to proceed.